

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matters of:

ZACHARY R.,

Claimant,

v.

HARBOR REGIONAL CENTER,

Service Agency.

OAH Case No. 2011010593

DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this on May 31, 2011, and July 8, 2011, in Torrance, California.

Zachary R.¹ (Claimant) was not present at hearing; he was represented by his mother, Lucia R. (Mother). Antoinette Perez, Program Manager, represented Harbor Regional Center (Service Agency).

This matter was consolidated with the case of *In the Matter of John Patrick R. v. Harbor Regional Center*, OAH No. 2011010592, and these two cases were heard together by agreement of both parties.

Oral and documentary evidence was received and argument heard. The record was closed and the matter submitted on July 8, 2011.

¹ The surnames of Claimant and his family have been omitted to protect their privacy.

ISSUE

The parties stipulated that the following issue is to be decided by the ALJ:

Should the Service Agency be required to fund structured program during school breaks for Claimant and/or increase sibling respite rate hours?

FACTUAL FINDINGS

1. Claimant is a 15-year-old male who receives services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq.² He has a diagnosis of autism. Claimant lives with his brother, John Patrick R. (Patrick), and his parents. Patrick is also a client of the Service Agency on the bases of autism and mental retardation. Claimant is able to dress and undress himself, wash his hands, and bathe and shower himself with only verbal assistance and minor physical assistance to manage the water temperature. He can pick out what to wear and can zip and button his clothing, but requires assistance most of the time. Claimant is toilet trained, but still requires some assistance with toileting. Mother reports that Claimant is pretty independent when it comes to eating, but has to be monitored because he has a tendency to make a mess when he is unsupervised. Claimant can get his own food, is a tidy person, and is very helpful. He helps Mother clean the house, including dusting furniture and vacuuming, but does not do the best job. He is capable of interacting well with his peers. Claimant presents aggressive behaviors including hitting, kicking and throwing objects. He is likely to tantrum when he's upset, and becomes violent and often uncontrollable. His tantrums have diminished in duration, from one hour to 20 minutes. Claimant feels remorseful for his actions after the fact.

2. Claimant is intelligent and determined. He performs well with numbers, reading and spelling, and even successfully participated in the school spelling bee. He also has good motor skills. Claimant has a speech delay and often talks very quickly making it hard for those who don't know him to understand him. Claimant understands the concepts of money, banking services, and ordering products on the internet. He can order his own food at restaurants and from room service in a hotel. He knows the value of coins and can create various combinations. Claimant loves to dance and often entertains his classmates and the school staff with his dancing skills. He enjoys playing on the computer, and can operate the DVD player and stereo.

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

3. Claimant currently receives 195 hours of In Home Support Services (IHSS). Patrick receives 283 hours of IHSS. Mother is the IHSS worker for both sons. Together with his brother, Claimant receives 24 hours of sibling rate respite per month from the Service Agency. Claimant also receives services through his school district.

4. Claimant requested the Service Agency to fund structured programming for Claimant during the summer and winter school breaks. If structured programming were not to be available through the Service Agency, Claimant requested an increase in sibling rate respite to a total of 48 hours per month.

5. On December 17, 2010, the Service Agency denied Claimant's request.

6. Claimant timely appealed the decision.

7. Claimant does not like to participate in programming designed for individuals with disabilities as he does not like to feel as though he is part of that group. The Service Agency's Consumer ID notes from June 2010 state that Mother wants a program with structure and social opportunity for Claimant during the summer so that he is not home all the time with nothing to do.

8. The Service Agency persuasively presented its position that Claimant's needs may be best met through in-home behavior services. Specifically, consistent implementation of behavior management strategies will control Claimant's behaviors and ultimately allow Claimant and his family greater access to the community. This will allow for a more long term solution to Claimant's behavioral issues. In line with their position, on April 7, 2011, the Service Agency offered to coordinate a behavioral assessment and thereafter provide appropriate in-home behavior services for Claimant, as well as an increase in sibling rate respite hours to 36 hours per month for a five month period, while the in-home behavior services were being delivered. The additional respite hours were offered to provide additional relief to parents while the in-home behavior services were being delivered, and were contingent on full participation in the clinically recommended behavioral program.

9. Claimant's most recent Individual/Family Services Plan (IFSP),³ dated March 16, 2011, states as a desired outcome that Claimant continue to decrease his difficult behaviors. It also states that Claimant will learn to properly socialize with his peers throughout the next school year.

10. The Service Agency provided in-home behavior services to Claimant from approximately March to June 2009 via one of its vendors, Family Behavioral Services. A Summary of Services report, dated July 2009, from Family Behavioral Services, shows that the service led to Claimant's challenging behavior decreasing. His tantrum behavior

³ Despite use of the term typically associated with early intervention services, the IFSP is actually the Individualized Program Plan (IPP) within the meaning of the Lanterman Act.

decreased significantly, from an estimated two to three times per day or more to one to two times per week on average, and often one of these was at his vision therapy session. Behavioral services helped Claimant and if consistently implemented, will address his needs. The evidence established that Claimant has and would continue to benefit from behavioral services.

11. The IFSP states that Claimant's aggressive behaviors at school have been minimized due to recent changes to Claimant's Behavior Support Plan.

12. Claimant appears to be participating in activities that would allow him to interact with his peers. He is currently enrolled in Tai Kwon Do classes, and participates in Teen Scene, a program that offers periodic lectures on socialization for all teens. Claimant participated in the Cotillion Club (active in planning monthly school dances), is going to be joining the Booster Club (sports and drama programs locally), and previously completed the Buddy Club (social skills training that assisted him in learning how to properly socialize with his peers). Participation in these community based activities will allow Claimant to continue interacting with his peers.

13. Mother feels that a structured program would allow Claimant to interact with peers and help prevent regression of Claimant's behaviors, and wants the Service Agency to fund Claimant to attend a program through Ability First, a vendor of the Service Agency. The Ability First Summer Vacation Day program is a full day program, from 8:30 a.m. to 5:30 p.m., and runs from the latter part of June through early September. Mother did not present any evidence showing that Claimant has been accepted into Ability First's program, or that she has even started the intake screening process. Unlike Patrick, Claimant did not attend a program called Beyond Basics in the past.⁴ Moreover, Mother did not establish that this program offers structured activities that would meet Claimant's needs. Rather, Ability First's program appears more like social recreation or, as Service Agency argues, day care services.

Respite

14. Respite services are those that provide family members with temporary relief from the continual care of a person with a disability. Respite is not intended to replace other services, such as behavior modification services, nor was it intended to fund social recreation activities. Claimant's behaviors have not worsened, and his needs or family circumstances have not otherwise changed to warrant an increase in the number of respite hours. The evidence, considered as a whole, reveals that the Service Agency has properly denied Claimant's request for additional respite hours.

⁴ In any case, insufficient evidence was presented showing that the program at Ability First was functionally akin to the Beyond Basics program.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Act is primarily twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509 and 4685), and to enable them to approximate the pattern of everyday living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (§§ 4501 and 4750-4751.) Accordingly, persons with developmental disabilities have certain statutory rights, including the right to treatment and habilitation services and the right to services and supports based upon individual needs and preferences. (§§ 4502, 4512, 4620 and 4646-4648.) Consumers also have the right to a “fair hearing” to determine the rights and obligations of the parties in the event of a dispute. (§§ 4700-4716.)

2. A regional center must develop and implement an “individual program plan” (IPP) for each consumer which specifies the consumer’s needs for services and supports. These services and supports must appear in statements of goals and also specific time-limited objectives in the IPP. Goals and objectives “shall be stated in terms that allow measurement of progress or monitoring of service delivery.” (Welf. & Inst. Code, § 4646.5, sub. (a)(2).)

The IPP must be reviewed, reevaluated and modified no less than once every three years by a planning team composed of regional center staff, the consumer, and (where appropriate) the consumer’s parents, to ascertain whether the planned services have been provided and the objectives have been fulfilled within the time specified in the IPP. (Welf. & Inst. Code, § 4646.5, sub. (b).)

3. Welfare and Institutions Code section 4646, subdivision (d) provides:

Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer’s goals, objectives, and services and supports that will be included in the consumer’s individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

4. Section 4418.6 provides that respite care may be provided as part of a family care program for the developmentally disabled. Respite care is defined as “...temporary and intermittent care provided for short periods of time.” The purpose of respite, therefore, is generally to give some relief to a parent or caregiver from the ongoing burden of caring for a demanding family member or individual.

5. Claimant has not established that he requires a structured program at this time, or that the program for which he seeks funding is a structured program that meets Claimant's needs. The information provided at the hearing was insufficient to show that Ability First's program contains sufficient structured programming to meet Claimant's current needs. Rather, Ability First's program appears more like social recreation or day care.

6. Respite services are not intended to provide behavioral services or social recreational services. Evidence of Claimant's behaviors does not establish that care and supervision needs previously catalogued have changed, warranting an increase in the number of respite service hours.

7. The Service Agency and Mother are encouraged to continue their efforts to find appropriate community-based socialization programs for Claimant.

ORDER

Claimant Zachary R.'s appeal is denied, and the Service Agency is not required to fund Claimant's request for a structured program and/or additional respite hours.

DATED: July 22, 2011

JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days.